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"AUDIT POLICY" (April 12, 2000)

Purpose:

To enhance protection of human health and the environment by encouraging regulated entities to voluntarily **discover**, promptly **disclose** and expeditiously **correct** violations of federal environmental requirements

How?

By providing incentives in the form of penalty mitigation

Civil Penalties

2 parts:

a) economic benefit component and

b) gravity-based component

100%
waiver of
gravity-based penalties for
violations discovered
systematically

75%

waiver of **gravity-based** penalties for other violations <u>regardless</u> of how they were discovered

EPA retains the right to collect any **economic benefit** that may have been realized by the facility as a result of the violation

- as an incentive to comply on time and
- to preserve a level playing field

Why?

9 Conditions

- 1. Systematic Discovery [only "optional" condition]
- 2. Voluntary Discovery
- 3. Prompt Disclosure
- 4. Discovery and Disclosure Independent of Government or Third Party Plaintiff
- 5. Correction and Remediation
- 6. Prevent Recurrence
- 7. No Repeat Violations
- 8. Certain Violations Excluded
- 9. Cooperation

1. Systematic Discovery [only "optional" condition]

Violation discovered through:

a) environmental audit

or

b) compliance management system

2. Voluntary Discovery

Discovery <u>cannot</u> be as a result of a legally mandated monitoring or sampling requirement

3. Prompt Disclosure

Written disclosure within 21 days after discovery that the violation has, or may have, occurred

4. Discovery and Disclosure Independent of Government or Third Party Plaintiff

Discovery and disclosure prior to:

- commencement of federal, state or local agency inspection or investigation
- notice of a citizen suit
- filing of a complaint by a third party
- reporting to the government by a "whistleblower"
- imminent discovery of the violation by a regulatory agency

5. Correction and Remediation

Must:

- correct the violation within <u>60 days</u> from date of discovery
- certify in writing that the violation has been corrected
- take appropriate measures as determined by EPA to remedy any environmental or human harm due to the violation

6. Prevent Recurrence

Agree <u>in writing</u> to take steps to prevent a recurrence of the violation

7. No Repeat Violations

Specific (or closely related) violation cannot have occurred:

- within past 3 years at the same facility or
- within past five years as part of a pattern at multiple facilities owned or operated by the same entity

8. Certain Violations Excluded

Violation cannot:

 have resulted in serious actual harm, or have presented an imminent and substantial endangerment to human health or the environment

or

• violate the specific terms of any judicial or administrative order or consent agreement

9. Cooperation

Cooperate as requested by EPA and provide such information as is necessary and requested by EPA

How do you make a self-disclosure?

- Prepare a written document setting forth the violation and explaining how each of the nine conditions of the Audit Policy has been met
- Submit document to the Audit Policy contact in the EPA Regional Office for the region in which your facility is located
- For multi-facility disclosures involving more than one EPA Regional Office, submit document to Audit Policy contact at EPA Headquarters

What happens when you make a self-disclosure?

- After determining whether the 9 conditions of the Audit Policy have been met:
- If 100% waiver of gravity-based penalty and if there was no significant economic benefit realized as a result of the violation, EPA generally will issue a Notice of Determination
- If only 75% waiver of gravity-based penalty (condition #1 not met) and/or there was a significant economic benefit realized as a result of the violation, generally will be resolved through a consent order signed by both parties
- If failed to meet conditions #2 #8 of the Audit Policy, do not qualify for mitigation under the Policy; EPA will contact you

For facilities located in Region VII, submit self-disclosures to:

Becky Dolph
Office of Regional Counsel
EPA Region VII
901 North Fifth Street
Kansas City, KS 66101

Tele: 913-551-7281 Fax: 913-551-7925